

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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FRED CHARLEMAGNE,

Petitioner,

-against-

GLEN S. GOODRD, Commissioner and  
BRIAN FISHER, Superintendent  
Eastern Correctional Facility,

Respondents.

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DEBORAH A. BATTIS, United States District Judge.

Fred Charlemagne ("Charlemagne") petitions this Court pro se for a writ of habeas corpus under 28 U.S.C. § 2254, challenging his June 15, 2001 conviction and sentence in New York State Supreme Court, New York County. A jury convicted Charlemagne of one count of burglary in the second degree and one count of possession of burglar's tools, in violation of New York Penal Law §§ 140.25(2) and 140.35. As a result of this conviction, the Court adjudicated Charlemagne as a persistent violent felony offender and sentenced him to concurrent terms of imprisonment of seventeen-years-to-life on the burglary charge and one year on the possession-of-burglar's-tools charge.<sup>1</sup> Charlemagne is currently serving this sentence.

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<sup>1</sup> The full facts and procedural history of this case are set forth in Magistrate Judge Pitman's Report and Recommendation and will not be reiterated here. (See Docket No. 9.)

United States Magistrate Judge Henry Pitman reviewed Charlemagne's Petition and issued a Report and Recommendation ("Report") recommending that it be dismissed. Pursuant to the provisions of 28 U.S.C. § 636(b)(1) and Fed. R. Civ. P. 72(b) in existence at the time the Report was issued, Judge Pitman ordered parties to file any objections to the Report within ten days after being served with a copy. By letter to this Court dated July 9, 2008, Charlemagne requested an extension of time to file objections and the Court granted him an additional 45 days, allowing until September 15, 2008. Nevertheless, Charlemagne has failed to file any objections to date.

In the absence of party objections, this court reviews a magistrate judge's report and recommendation under the clear error standard. Wilds v. United Parcel Serv., Inc., 262 F.Supp.2d 163, 169 (S.D.N.Y. 2003). Here, the Court finds no clear error on the face of the record, and therefore ORDERS as follows:

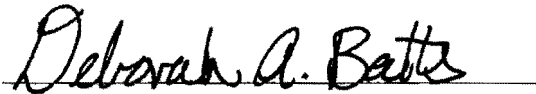
1. The Report and Recommendation of United States Magistrate Judge Henry Pitman dated June 30, 2008 is approved, adopted, and ratified by the Court;

2. The application by Mr. Charlemagne for a writ of habeas corpus is denied and the petition of Mr. Charlemagne is dismissed;

3. The Clerk of the Court is directed to close the docket  
in this case.

SO ORDERED.

DATED: New York, New York  
May 31, 2011

A handwritten signature in cursive script, reading "Deborah A. Batts", is written over a horizontal line.

DEBORAH A. BATTS  
United States District Judge